

Senate Bill No. 1951

CHAPTER 714

An act to amend Sections 4928, 4929, 4933, 4934, 4935, 4955, and 4977.2 of, and to add Sections 4934.1, 4934.2, 4955.1, 4955.2, and 4960.2 to, the Business and Professions Code, relating to professional boards, and making an appropriation therefor.

[Approved by Governor September 19, 2002. Filed
with Secretary of State September 19, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1951, Figueroa. Professional boards: acupuncture board.

Existing law provides for the regulation of various professions by professional boards within the Department of Consumer Affairs, including the regulation of the practice of acupuncture by the Acupuncture Board. Existing law provides, until July 1, 2003, that the board consists of 9 members. Existing law requires the board, until July 1, 2003, to employ an executive officer and other personnel necessary for the administration of the laws regulating the practice of acupuncture. Existing law provides that those provisions of law are repealed on January 1, 2004. Under existing law, all revenue received by the board in the course of regulating the practice of acupuncture is deposited into the Acupuncture Fund, which is continuously appropriated.

This bill would delete the July 1, 2003, and January 1, 2004, dates upon which those provisions establishing the board and requiring it to employ an executive officer and other personnel become inoperative and are repealed. The bill would instead extend the operation of those provisions until July 1, 2005, and would repeal those provisions on January 1, 2006.

Existing law requires the Acupuncture Board to include 4 acupuncturists that are not licensed as physicians and surgeons.

This bill would instead require the board to include 3 acupuncturists who are not licensed as physicians and surgeons and one acupuncturist who is a faculty member of an acupuncture college approved by the board.

Existing law provides that a majority of the appointed board members constitutes a quorum for the conduct of business.

This bill would provide that 5 members of the board constitutes a quorum for the conduct of business.

This bill would request the Milton Marks "Little Hoover" Commission on California State Government Organization and

Economy to conduct separate reviews addressing specified issues with respect to the practice of acupuncture and report its findings to the Legislature by September 1, 2004. The bill would appropriate up to \$250,000 to the board from the Acupuncture Fund to pay for all costs associated with this review. By authorizing the use of revenue in a continuously appropriated fund for a new purpose, the bill would make an appropriation. The bill would also require the board to conduct certain studies and reviews relating to acupuncture assistants and report its findings to the department and the Joint Legislative Sunset Review Committee by September 1, 2004.

Existing law provides that it is a misdemeanor for a person to practice acupuncture or to hold himself or herself out as practicing or engaging in the practice of acupuncture without a current and valid acupuncturist's license. Existing law authorizes the Acupuncture Board to deny, suspend, revoke, or impose probationary conditions upon, the license of an acupuncturist if the acupuncturist is guilty of specified acts of unprofessional conduct.

This bill would provide that it is a misdemeanor for a person to fraudulently buy, sell, or obtain a license to practice acupuncture or to violate the provisions of law regulating the practice of acupuncture. The bill would specify that misdemeanor punishment for a violation of these provisions includes specified fines and imprisonment in a county jail. The bill would revise the list of specified acts that constitute unprofessional conduct.

Because a violation of the bill's requirements would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 4928 of the Business and Professions Code is amended to read:

4928. The Acupuncture Board, which consists of nine members, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which



becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 4929 of the Business and Professions Code is amended to read:

4929. Three members of the board shall be acupuncturists with at least five years of experience in acupuncture and not licensed as physicians and surgeons, one member of the board shall be a licensed acupuncturist who is also a faculty member of any board approved acupuncture college, one member of the board shall be a physician and surgeon licensed in this state with two years of experience in acupuncture, and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist.

The Governor shall appoint the four acupuncturist members qualified as provided in this section, who shall be appointed to represent a cross section of the cultural backgrounds of licensed members of the acupuncturist profession, two of the public members, and the one licensed physician and surgeon member qualified as provided in this section. All members appointed to the board by the Governor shall be subject to confirmation by the Senate. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. Any member of the board may be removed by the appointing power for neglect of duty, misconduct, or malfeasance in office, after being provided with a written statement of the charges and an opportunity to be heard.

SEC. 3. Section 4933 of the Business and Professions Code is amended to read:

4933. (a) The board shall administer this chapter.

(b) The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of acupuncture.

(c) Five members of the board shall constitute a quorum to conduct business.

(d) It shall require an affirmative vote of a majority of those present at a meeting of the board to take any action or pass any motion.

SEC. 4. Section 4934 of the Business and Professions Code is amended to read:

4934. The board shall employ personnel necessary for the administration of this chapter; however, the board may appoint an



executive officer who is exempt from the provisions of the Civil Service Act.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 5. Section 4934.1 is added to the Business and Professions Code, to read:

4934.1. (a) The Legislature requests the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy to conduct a comprehensive analysis consisting of the following reviews and evaluations and shall report their findings and recommendations to the Legislature by September 1, 2004:

(1) Review and make recommendations on the scope of practice for acupuncturists.

(2) Review and make recommendations on the educational requirements for acupuncturists.

(3) Evaluate the national examination, administered by the National Certification Commission for Acupuncture and Oriental Medicine, and make recommendations as to whether or not the national examination should be offered in California in lieu of, or as part of, the state examination.

(4) Evaluate and make recommendations on the approval process of the Accreditation Commission of Acupuncture and Oriental Medicine, the approval process of the Bureau for Private Postsecondary Education, and the board’s approval process.

(b) The board shall pay for all of the costs associated with the comprehensive analysis. An amount to pay for all of the costs associated with the comprehensive analysis, up to two hundred fifty thousand dollars (\$250,000), is hereby appropriated to the board from the Acupuncture Fund.

SEC. 6. Section 4934.2 is added to the Business and Professions Code, to read:

4934.2. The board shall conduct the following studies and reviews, and shall report its findings and recommendations to the department and the Joint Legislative Sunset Review Committee no later than September 1, 2004:

(a) The board shall conduct a comprehensive study of the use of unlicensed acupuncture assistants and the need to license and regulate those assistants.



(b) The board shall study and recommend ways to improve the frequency and consistency of their auditing and the quality and relevance of their courses.

SEC. 7. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “oriental medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, oriental medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.



SEC. 8. Section 4955 of the Business and Professions Code is amended to read:

4955. The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct.

Unprofessional conduct shall include, but not be limited to, the following:

(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

(c) False or misleading advertising.

(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.



(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

(i) Any action or conduct that would have warranted the denial of the acupuncture license.

(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

(k) The abandonment of a patient by the licensee without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

(l) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture.

SEC. 9. Section 4955.1 is added to the Business and Professions Code, to read:

4955.1. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist.

(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients.

SEC. 10. Section 4955.2 is added to the Business and Professions Code, to read:

4955.2. The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing any one of the following:



- (a) Gross negligence.
- (b) Repeated negligent acts.
- (c) Incompetence.

SEC. 11. Section 4960.2 is added to the Business and Professions Code, to read:

4960.2. The board in all cases of revocation shall certify the fact of the revocation, under the seal of the board, to the business licensing entity of the cities or counties in which the license of the acupuncturist has been revoked. The record of the revocation made by the county or city clerk shall be sufficient evidence of the revocation, and of the regularity of all proceedings of the board in the matter of the revocation.

SEC. 12. Section 4977.2 of the Business and Professions Code is amended to read:

4977.2. Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of an acupuncture corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined by Section 13401 of the Corporations Code.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

